Lee Eng Eow v Low Ah Lian & Anor

HIGH COURT (PENANG) — ORIGINATING SUMMONS NO 24–976–89
ABDUL HAMID JC
25 JULY 1991

Succession *— Testacy — Testator bequeathed shares to wife and sons — Company's articles of association prohibited transfer of shares to testator's female descendants — Whether wife entitled to shares under will — Whether articles of association prohibited transmission by operation of law*

Words and Phrases *— 'Transfer'*

Words and Phrases *— 'Transmission'*

The plaintiff was a co-executor of the estate of Lee Guat Cheow, deceased who left a will bequeathing his estate to his wife, the first defendant, and his two sons, one of whom is the plaintiff. The plaintiff was the sole surviving male descendant of the deceased as his brother predeceased the deceased. The deceased owned 1,300 shares in the second defendant. Article 16 of the second defendant's articles of association provided that the shares in the company could only be transferred to the male descendants of the deceased. The plaintiff applied to the High Court, inter alia, for a declaration that he was entitled to absolute ownership of the deceased's shares. The plaintiff argued that since the deceased in his lifetime could not have transferred the shares to the first defendant because of art 16, he could not have done so after his death by will. The plaintiff, however, conceded that his deceased brother's male descendants were also entitled to the shares.

Held, dismissing the application:

(1) 'Transfer' means 'transfer by the act of a member' while 'transmission' means 'transmission by operation of law'.

(2) Article 16 prohibited the transfer of shares to persons other than the male descendants of the deceased but did not prevent transmission. Even if the first defendant could not register the shares in her name, she would still be entitled to the shares as an equitable owner under the will.

[Bahasa Malaysia summary

Plaintif ialah wasi bersama harta pusaka Lee Guat Cheow, si mati yang meninggalkan satu wasiat mewariskan harta pusakanya kepada isterinya, defendan pertama, dan kedua-dua anak lelakinya, salah seorang daripada keduanya ialah plaintif. Plaintif ialah satu-satunya keturunan lekaki si mati yang hidup kerana abangnya meninggal sebelum si mati. Si mati adalah tuan punya 1,300 syer dalam defendan kedua. Perkara 16 perkara-perkara persatuan defendan kedua memper-

untukan bahawa syer dalam syarikat itu hanya boleh dipindah milik kepada keturunan lelaki si mati. Plaintif memohon kepada Mahkamah Tinggi, antara lainnya, untuk satu deklarasi bahawa beliau berhak kepada keempunyaan mutlak syer si mati. Plaintif berhujah bahawa kerana si mati dalam hayatnya tidak boleh memindah milik syer tersebut kepada defendan pertama disebabkan perkara 16, beliau tidak boleh berbuat demikian setelah beliau meninggal menerusi wasiat. Plaintif, akan tetapi, bersetuju bahawa keturunan lelaki abangnya yang telah meninggal juga berhak ke atas syer tersebut.

Diputuskan, menolak permohonan itu:

(1) 'Pindah milik' ('Transfer') bermakna 'pindah milik menerusi perbuatan seseorang ahli' sementara 'perpindahan' ('transmission') bermakna 'perpindahan menerusi kuatkuasa undang-undang'.

(2) Perkara 16 melarang pemindahan milik syer kepada sesiapa selain daripada keturunan lelaki si mati tetapi tidak mencegah perpindahan. Walaupun defendan pertama tidak boleh mendaftar syer tersebut dalam namanya, beliau masih berhak ke atas syer itu sebagai tuan punya ekuiti di bawah wasiat itu.]

Case referred to

1 *Re Greene, decd* [1949] Ch 333 (folld)

Foong Kai Choong (*BC Teh & Yeoh*) for the plaintiff.
Tan Phock Kin (*Thillaimuthu & Phock Kin*) for the defendants.

Abdul Hamid JC: By an originating summons the plaintiff prayed for:

1 A declaration that Lee Eng Eow, being the surviving male descendant of Lee Guat Cheow, deceased is entitled under the will of Lee Guat Cheow, deceased dated 18 April 1972 to absolute ownership of 1,300 shares in the company known as Lee Guat Cheow & Co Sdn Bhd belonging to Lee Guat Cheow, deceased.

2 An order that the board of directors of Lee Guat Cheow & Co Sdn Bhd do all acts and deeds as may be necessary to give effect to the above declaration including effecting the transfer of the said shares now in the name of Lee Guat Cheow, deceased, into the name of Lee Eng Eow.

Lim Eng Eow is a co-executor of the estate of Lee Guat Cheow, deceased. The deceased died on 5 September 1980 leaving a will. Under cl 6 of the will, the deceased devised and bequeathed all his remaining estate to his wife (the first defendant) and his sons Lee Eng Eow (the plaintiff) and Lee Eng Hai. Lee Eng Hai predeceased the deceased. The deceased is a registered owner of 1,300 shares in the company known as Lee Guat Cheow & Co Sdn Bhd (the second defendant). Article 16 of the articles of association of the company provides:

> Shares of the company can be transferred by a member only to any of the male descendants of Lee Guat Cheow in the male line; and shares standing in the name of the trustees of the will of any deceased member may be transferred upon any change of trustees for the time being of such will.

Being the sole surviving male descendant of the deceased, the plaintiff claims that he is entitled to the whole of the 1,300 shares. However, in the course of the argument counsel for the plaintiff made a concession that the male descendants of Lee Eng Hai were also entitled to the shares.

The facts are not in dispute. The only question for determination is whether the provisions of art 16 of the articles of association of the company overrides the provision of the will.

Put simply the argument of counsel for the plaintiff was that as the deceased in his lifetime could not have transferred the shares to the first defendant because of art 16, he could not do the same after his death by a provision in his will. On the other hand, counsel for the defendants pointed out that there was a difference between 'transfer' and 'transmission'.

What art 16 prohibits is the transfer of shares to persons other than his male descendants. 'Transfer' means transfer of legal title to shares by registering the transferee as the owner of the shares. It does not prevent transmission.

Volume 7 of *Halsbury's Laws of England* (4th Ed) at para 417 makes a clear distinction between 'transmission' and 'transfer'. 'Transmission' means 'transmission by operation of law, including devolution by death ...'. On the other hand a 'transfer' is a 'transfer by the act of a member'.

In *Executors, Administrations and Probate* by William, S Mortimer and Sinnucks (16th Ed) at p 947, it is said: 'The articles of a company cannot, however, by-pass the personal representatives. If they purport themselves to operate a transfer they are invalid to this extent.' *Re Greene, decd*[1] was cited as authority for that proposition.

I am of the view that even if it would not be possible for the first defendant to have the shares registered in her name, that does not mean that she would not be entitled to the shares as an equitable owner under the will.

The application is dismissed with costs. My earlier order dated 2 January 1991 is set aside.

Application dismissed.

Reported by Wong Kian Kheong